IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.357 OF 2005

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Union of India ...Petitioner

v/s.

M/s.B.D.Shah & Co. ...Respondent

...

Mr.Suresh Kumar for the Petitioner.

Mr.U.S.Samudrala for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 13TH DECEMBER,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the learned arbitral against claim

No.2, claim Nos. 12 and claim No.13. By award against claim No.2, the learned arbitrator has directed refund of the security deposit. The claim No.2 in the statement of claim reads as under:-

> Claim No.2: Refund of security deposit
>
> Claimant is entitled to refund of security deposit Rs.81,923.00 from Respondent. Claimant, therefore, claims Rs.81,923.00 from Respondent on this account.

The Petitioner submitted reply to claim No.2. which reads as under:-

> Claim No.2: Refund of security deposit: Security deposit is being kept for due satisfactory completion of work and can only be refunded after expiration of maintenance period & as specified in the tender reckoned from the date of which the engineer have passed the certificate of completion comprising the whole of the works as per clause 51(3) of G.C.C. which

> the claimant has not followed hence question does not arise to refund the SD. Further contract has been terminated as Risk & Cost of contractor as such SD is forfeited & cannot to be released.

The Petitioner, therefore, was relying on clause 51(3) of the General Conditions of Contract. It was the defence of the Petitioner that because the work was not completed in time, even during the extended time, the contract was terminated and therefore the Respondent was entitled to forfeit the security deposit. Perusal of clause 51.3 shows that security deposit can be refunded after expiration of period of maintenance Perusal of clause 17(B) of the G.C.C. shows that if the Petitioner is satisfied that the work cannot be completed within the time allowed or extended, then the contract can be terminated or rescinded under clause 62. It is, thus, clear that if the work is not completed within the time allowed, then the contract can be determined in accordance with Section 62 and if the contract is determined in accordance with clause 62, then

security deposit can be forfeited. The award in relation to claim No.2 reads as under:-

> Claim No.2- Refund of security deposit- From the sequence of events it is found that the contract has been terminated after the expiry of date of completion. In terms of clause 62 of GCC this termination does not tent amount to Risk & Cost termination.
>
> As such the claim for SD amounting to Rs.81923.00 is payable to the claimant.

3. Perusal of the above quoted award shows that the learned arbitrator has recorded the conclusion that the termination of the contract in the present case does not amount to termination under clause 62. The reasons why the learned arbitrator has reached that conclusion are not to be found in the award. The learned arbitrator has not referred to the defence raised in this regard by the Petitioner. There is a statutory duty imposed on the arbitrator by section 31(3) of the Arbitration & Conciliation Act to

disclose the reasons on which the award is based. The arbitrator is under a statutory duty to consider the contentions and the defence raised by the Petitioner. The arbitrator in making the award against claim No.2 has clearly omitted from his consideration the defence raised by the Petitioner and has also not disclosed the reasons for the conclusion that has been recorded by the learned arbitrator. In my opinion, therefore, the award made against claim No.2 is liable to be set aside and it is accordingly set aside.

4. So far as claims Nos. 12 & 13 are concerned, claim No.12 relates to interest and claim No.13 relates to costs. The award made in that regard reads as under:-

> Claim No.12- Interest
>
> The Arbitrator noted that request of Claimants for extension of completion time up to dt. 31-12-2002 was denied by the Respondents. Presuming that the work would have been completed, had the Claimant been given time up to 31-12-2002, and final

measurements as well as billing etc. would have taken further 3 months, the interest becomes payable with effect from 31-3-2003. As such interest on payment amount against different claims at the rate of 10% simple interest on entire amount with effect from 31-3-2003 is considered justified. No interest, however, shall be payable on Claim No.13.

Claim No.13-Cost

The Claimants have submitted that they have been forced into this arbitration due to wrongful termination of the contract by Respondents. The Arbitrator is of the view that certain costs would have been incurred by the Claimants, which should be compensated. After considering the details of the case the Arbitrator awards a lump sum amount of Rs.20000/- against this claim.

5. Perusal of the defence of the Petitioner shows that the Petitioner was relying on clauses 64(5) and 64(6) of the G.C.C. to claim that no interest is payable to the Respondent and that the costs of arbitration have to be shared by the parties equally. Clause 64(5) and Clause 64(6) of the G.C.C.reads as under:-

> 64(5) Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.
>
> 64(6) The cost of arbitration shall be borne by the respective parties. The cost shall interalia include fee of the arbitrator(s)) as per the rate fixed by the Railway Administration from time to time.

6. Perusal of the award made against claims Nos. 12 & 13 quoted above shows that the learned arbitrator has totally omitted from his consideration the clause 64(5) and clause 64(6) of

the G.C.C.. Thus, the award made by the learned arbitrator against claims Nos. 12 & 13 is clearly in breach of the principles of natural justice, which requires every quasi-judicial authority to apply its mind to all relevant consideration and not to exclude from its consideration the relevant material . The award made against claims Nos. 12 & 13, therefore, is liable to be set aside. It is accordingly set aside.

7. Petition, therefore, succeeds. The award made by the learned arbitrator against claims No. 2, 12 & 13 is set aside. The Respondent is directed to pay costs of the Petition to the Petitioner, as incurred by the Petitioner.

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